

CRIMINAL MISC. APPLICATION NO. 1944 OF 1985.

Date of decision: 16.4.1996

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. Manoj N. Popat, advocate for petitioner.

Respondent No.1- struck off.

Mr. S.R. Divetia, A.P.P. for respondent No.2-State.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R. R. Jain, J.

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April 16, 1996.

Oral judgment:

This is an application under Section 482 of the Criminal Procedure Code ("the Code" for short) for quashing complaint pending in the Court of learned Metropolitan Magistrate (Court No.9), Ahmedabad, being Inquiry Case No.81/85. The original complainant, Purandas Narandas Vaidya, has filed complaint under Sections 464, 420 and 114 of the Indian Penal Code against the present petitioner as well as one Babubhai Ambalal Pandya, alleging fabrication of power of attorney and document for transfer of property. While taking cognizance of the aforesaid complaint, the learned Magistrate sent it for investigation under Section 156 (3) of the Code to the

concerned Police Inspector. It is at this stage that the petitioner/original accused No.2 approached this Court for quashing complaint.

Original complainant was impleaded as respondent No.1 but as process of this proceeding could not be served, time and again the matter was notified for removing office objection. Despite having given several opportunities the petitioner failed to remove office objection. Consequently, vide order dated 28.3.1989 name of respondent No.1/original complainant, was struck off from the record. In this background, it is argued by the learned A.P.P. that now the petition would not be maintainable. As a cardinal rule, the original complainant being the aggrieved party has to be heard before passing any order on merit. Since the affected party is not before this court any decision on merit would be behind back of the person concerned and is not contemplated in the present judicial system of adversary. Therefore, in absence of original complaint, the petition is not maintainable.

Apart from this fact, while taking cognizance of the matter, the learned Magistrate has simpliciter forwarded complaint to the concerned Police Inspector for further investigation and taking appropriate steps. The investigation is pending and no offence has been registered against the petitioner. Consequently, it would be premature to entertain this application for quashing. On facts, it may happen that after investigation the investigating officer may not find any substance and drop to prosecute. In that case, question of quashing will not arise. Therefore, on the face of it, the application appears to be premature as the matter is under investigation.

In light of aforesaid discussion, the application is dismissed. Rule is discharged. Ad interim relief stands vacated.